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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 57090(70904)																	
	Application Number 10/082,466-Conf. #4306	Filed February 25, 2002																	
	First Named Inventor Tetsuya Okumura et al.																		
	Art Unit 2627	Examiner A. M. Psitos																	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table><tbody><tr><td><input type="checkbox"/></td><td>applicant /inventor.</td><td colspan="2"><u>/William J. Daley, Jr./</u> Signature</td></tr><tr><td><input type="checkbox"/></td><td>assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td colspan="2"><u>William J. Daley, Jr.</u> Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/></td><td>attorney or agent of record. Registration number <u>35,487</u></td><td colspan="2"><u>(617) 517-5556</u> Telephone number</td></tr><tr><td><input type="checkbox"/></td><td>attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</td><td colspan="2"><u>December 12, 2007</u> Date</td></tr></tbody></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/>	applicant /inventor.	<u>/William J. Daley, Jr./</u> Signature		<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>William J. Daley, Jr.</u> Typed or printed name		<input checked="" type="checkbox"/>	attorney or agent of record. Registration number <u>35,487</u>	<u>(617) 517-5556</u> Telephone number		<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____	<u>December 12, 2007</u> Date	
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<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.																			

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT:	T. Okumura, et al.	EXAMINER:	Aristotelis M. Psitos
U.S.S.N.:	10/082,466	GROUP:	2627
FILED:	February 25, 2002	Conf. No.	4306
FOR:	OPTICAL REPRODUCING DEVICE THAT CONTROLS THE STRENGTH OF THE LIGHT BEAM DURING REPRODUCTION (As-Amended)		

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) on December 12, 2007.

/ William J. Daley, Jr. /  
By: \_\_\_\_\_  
William J. Daley, Jr.

.....  
**REMARKS: PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

The following remarks support Applicant's "Pre-Appeal Brief Request for Review" filed concurrently herewith in the above-referenced application. These remarks constitute no more than five pages, and are being filed with a Notice of Appeal.

No amendments are being filed with this request.

Claims 1-20 stand rejected under 35 U.S.C. §103 as being unpatentable over Applicants Admitted Prior Art (AAPA) in view of Tanaka et al./Fuji and all further considered in view of Okumura et al. [Okumura `992]. The remaining pending claims depend from one or more of the independent claims. Dependent claims 13-18 were objected to as being in improper dependent form as not limiting the subject matter of a previous claim.

Applicants respectfully request review of the Final Office Action in the above-referenced application.

Applicants are filing the within "Pre-Appeal Brief Request for Review" based on the following clear errors and/or omissions in the Final Office Action mailed on September 12, 2007.

First Clear Error and/or Omission in the Final Office Action:

The Examiner has made a clear error and/or omission as to claims 13-18, at least because *claims 13-18 do limit the subject matter of a prior claim*. As described below, the Examiner has erroneously interpreted independent claims 1 and 2, as being limited to only measuring the short mark (2Tpulse). Applicants note that the following remarks directed to claim 1 also apply for claim 2.

The optical reproducing device of claim 1 includes a predetermined length mark signal measurement means and a power control means. The predetermined length mark signal measurement means *measures* the reproduction signal characteristics respectively of *a short reproducing power control mark and of a long reproducing power control mark* from information data that are recorded in a data recording area of a sector of an optical recording medium. The power control means controls the reproducing power of a light beam based on the measured reproduction signal characteristics of the *short and long reproducing power control marks*. In sum, the optical reproducing device of claim 1 does *not exclude* the predetermined length mark signal measurement means from measuring long power control marks and also does *not provide* that the power control means controls the reproducing power of a light beam based only on the measured reproduction signal characteristics of a short power control mark as would the4 case if the Examiner's assertion was correct.

The wherein clause of claim 1 does further modify the predetermined length mark signal measurement means as to how it functions with respect to the short power control marks. The *wherein clause does not alter* the previously recited structure (*i.e.*, the predetermined length mark signal measurement means measures both long and short reproducing power control marks). The

wherein clause provides that the predetermined length mark signal measurement means is further operable to detect a specific pattern that includes an arrangement of a plurality of short reproducing power control marks from the bit arrangement pattern of the information data in the data recording area. It also is provided that when such a specific pattern is detected, the predetermined length mark signal measurement means measures the reproduction signal characteristic of only the short reproducing power control marks that are included in the specific pattern. Thus, the wherein clause does not exclude the measurement of the long power control marks by the predetermined length mark signal measurement means or the use of such a measurement; it merely includes language as to when the short reproducing power control marks are to be measured.

Second Clear Error and/or Omission in the Final Office Action:

The Examiner has made a clear error and/or omission as to the rejection of claims 1-20 under §103 as being unpatentable over AAPA in view of Tanaka et al. and/or Fuji and all further considered in view of Okumura '992 at least because the combination of these references would not yield the claimed invention and also because there is no motivation or teaching to combine these references. Applicants note that the following remarks directed to claim 1 also apply for claim 2.

On the basis of the structure illustrated in Fig. 5 of the subject application, the Examiner asserts (see pg 4 of the Office Action) that AAPA depicts a laser power control system that relies upon a ratio of long and short pulse comparisons in order to maintain the laser power. Hence AAPA therefore discloses the limitations of claim 1, except for requiring/limiting the measuring of the short reproducing power control mark. In contrast, page 5, lines 7-16 of the subject application provides that sector 300, which is one unit of a recording area in the magneto-optical disk 220, includes a reproducing power control area 302 for recording reproducing power control marks. In contrast, the claimed optical reproducing device is used for a recording medium that does not need a separate reproducing power control area. Instead, the claimed optical reproducing device detects a specific pattern including a short mark and a specific pattern

including a long mark from a bit arrangement pattern of information data that is recorded in the recording medium.

Therefore, AAPA fails to teach or suggest a number of features of claim 1; namely (a) pattern detection means included for detecting a specific pattern including therein an arrangement of a plurality of short reproducing power control marks from amongst a bit arrangement pattern of the information data in the data recording area, and (b) when the specific pattern is detected, the reproducing signal characteristic of short reproducing power control marks is measured, and the measured reproduction signal characteristic corresponds only to the plurality of short reproducing power control marks included in the specific pattern. Applicants submit that one skilled in the art would have considered AAPA as teaching away from the claimed invention.

As indicated by the Examiner, Tanaka describes (col. 9, lines 15 plus) that Fig. 9 illustrates a recording mark pattern for measuring pattern-shift, and Fig. 10 illustrates a recording mark pattern for measuring thermal shift. This disclosure merely teaches that to evaluate the edge shift, the shift amount of the edge is measured in the recording mark formed in the pattern-shift pattern and in the recording mark formed in the thermal-shift pattern, respectively. In this description, Tanaka does not refer to the detection of a specific pattern. Therefore, Tanaka does not teach or suggest the claimed pattern detection means.

The Examiner apparently cites Fuji as an alternative to Tanaka; however, the Office Action does not specify where the pattern detection means of claim 1 is taught or suggested in Fuji. Notwithstanding this omission, Applicants offer the following observations for Fuji.

Fuji describes a long mark level detecting means 4a which detects a long mark signal from a readout signal, and short mark level detecting means 4c which detects a short mark signal from a readout signal (see col. 7, line 63 to col. 8, line 2 thereof); however, *Fuji* also describes that a *reproducing power control area is provided separate from the reproduced data recording area* (see col. 12, lines 25 to 29). Therefore, the above remarks regarding the separate recording area of AAPA apply to Fuji and thus Fuji also teaches away from the claimed invention.

As to Okumura `992, this reference teaches that the short reproducing power control marks and the long reproducing power control marks are provided inside the data recording area of the sector (see Figure 10.). However, Figures 2 and 10 thereof actually show a short mark recording region, a long mark recording region, and a data recording region, which is provided separate from the former two recording regions. In contrast, the short reproducing power control marks and the long reproducing power control marks being detected in claim 1 are all located inside the data recording area. Such a structure is different from that of the sector described in Okumura `992 and thus any detection device described in Okumura `992 also would be different from that set forth in claim 1. Thus, the post-reproduction process is different from the process described in Okumura `992. Applicants also adopt herein the remarks regarding Okumura `992 include in the Response dated June 26, 2007 (see pgs 14-17 thereof).

Applicants submit that all of the claims under final rejection are in condition for allowance and should be allowed, and that the Final Office Action should be withdrawn.

Applicants believe that there is no fee required for the submission of the Pre-Appeal Brief Request for Review. However, if for any reason one or more fees are required for the entry and consideration of that Request, these Remarks, or anything else being filed herewith, the Commissioner is hereby authorized and requested to charge Deposit Account No. **04-1105**.

Respectfully submitted,  
Edwards Angell Palmer & Dodge, LLP

**/ William J. Daley, Jr. /**

Date: December 12, 2007

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